

CASE NO. 12-57302

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CINDY LEE GARCIA,
Plaintiff-Appellant,

vs.

GOOGLE INC. and YOUTUBE, LLC,
Defendants-Appellees.

**APPELLEES GOOGLE INC. AND YOUTUBE, LLC'S
MOTION FOR JUDICIAL NOTICE**

On Appeal from the United States District Court
for the Central District of California
Hon. Michael W. Fitzgerald, District Judge
District Court Case No. CV-12-8315-MWF (VBKx)

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MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Defendants-Appellees Google Inc. and YouTube, LLC (collectively, “YouTube”), hereby request that the Court take judicial notice of the following facts in support of their Answering Brief:

1. That the trailer for a film called “Innocence of Muslims” (the “Film”), its role (if any) in the attack on the American embassy in Benghazi, Libya, and subsequent statements made by the United States government, are the subject of substantial and continuing public debate, including in the recent presidential election.¹

2. That Susan Rice, U.S. ambassador to the United Nations, withdrew from consideration for appointment as U.S. Secretary of State following criticism

¹ See Ross Douthat, *The Mystery of Benghazi*, The New York Times, October 13, 2012, available at http://www.nytimes.com/2012/10/14/opinion/sunday/douthat-the-mystery-of-benghazi.html?ref=rossdouthat&_r=0; David Ignatius, *CIA Documents Supported Susan Rice's Description of Benghazi Attacks*, The Washington Post, October 19, 2012, available at http://www.washingtonpost.com/opinions/benghazi-attack-becomes-political-ammunition/2012/10/19/e1ad82ae-1a2d-11e2-bd10-5ff056538b7c_story.html?wprss=rss_homepage; David D. Kirkpatrick, *Benghazi and Arab Spring Rear Up in U.S. Campaign*, The New York Times, October 21, 2012, available at http://www.nytimes.com/2012/10/22/us/politics/benghazi-and-arab-spring-rear-up-in-us-campaign.html?hp&_r=0; Larry Margasak, *State Department: We Didn't Link Libya Attack to Video*, Associated Press, October 9, 2012, available at <http://www.usatoday.com/story/news/nation/2012/10/09/state-department-libya-attack/1623411/>. True and correct copies are attached as **Exhibits A, B, C, and D**, respectively.

of public comments that she made regarding the Film's alleged role in the Benghazi attacks.²

3. That Secretary of State Hillary Clinton was questioned during a congressional hearing on January 23, 2013, regarding Ambassador Rice's comments about the Film.³

Under Federal Rule of Evidence 201(d), judicial notice may be taken at any stage of the proceeding, including by an appellate court during the pendency of an appeal. Fed. R. Evid. 201(d); *see also Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357-58 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1.

The Court may take judicial notice of any matter "not subject to reasonable dispute because it: (1) is generally known within the trial court's jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot

² See Allison Brennan, *Rice Once Appeared to be Inevitable Secretary of State*, CNN, December 13, 2012, available at <http://www.cnn.com/2012/11/27/politics/susan-rice-profile>. A true and correct copy is attached hereto as **Exhibit E**.

³ See Sarah Parnass, *Hillary Clinton Endures Brusque Questioning at Hearings*, ABC News, January 23, 2013, available at <http://abcnews.go.com/Politics/OTUS/hillary-clinton-endures-brusque-questioning-hearings/story?id=18292329>; Arshad Mohammed and Tabassum Zakaria, *Clinton Forcefully Defends Handling of Benghazi Attack*, Reuters, January 23, 2013, available at <http://www.reuters.com/assets/print?aid=USBRE90M0SM2013012>. True and correct copies are attached hereto as **Exhibits F and G**, respectively.

reasonably be questioned.” Fed. R. Evid. 201(b). Further, a court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

The facts set forth above are the proper subject of judicial notice; they are not subject to reasonable dispute and have been widely reported on by various reputable media outlets. *See Singh v. Ashcroft*, 393 F.3d 903, 905-907 (9th Cir. 2004) (taking judicial notice of the existence and operations of the Indian government’s counterterrorism unit because it was the subject of articles by reputable international media sources and a matter of common knowledge); *see also Heliotrope Gen., Inc. v. Ford Motor Co.*, 189 F.3d 971, 981 (9th Cir. 1999) (taking judicial notice of information contained in news articles).

Moreover, many of the facts occurred after the district court proceedings concluded and therefore could not have been part of the record on appeal. *See Singh*, 393 F.3d at 903 (stating that appeals court can take notice of facts beyond dispute and need not depend on proof in the record of such facts).

YouTube therefore respectfully requests that this Court take judicial notice of the facts set forth above in considering this appeal.

DATED: February 15, 2013

PERKINS COIE LLP

By: /s/ Timothy L. Alger

Timothy L. Alger

Attorneys for Appellees
Google Inc. and YouTube, LLC

EXHIBIT A

The New York Times



October 13, 2012

The Mystery of Benghazi

By ROSS DOUTHAT

TWENTY-FOUR hours after the American compound in Benghazi was attacked and our ambassador murdered, the tragedy seemed more likely to help President Obama's re-election campaign than to damage it.

The White House already enjoyed more public credibility on foreign policy than on almost any other issue. When Mitt Romney reacted to the attack with a partisan broadside, portraying a news release sent out by the Cairo embassy before any violence began as a White House apology to the attackers, the president's path forward seemed clear. He would be disciplined and careful, show anger and steel but also coolness under pressure, and let the rally-round-the-flag effect do its natural work.

What happened instead was very strange. Having first repudiated the embassy's apology to Muslims offended by a movie impugning their prophet, the Obama administration decided to embrace that apology's premise, and insist that the movie was the crucial ingredient in the Sept. 11 anniversary violence.

For days after the attack, as it became clearer that the Benghazi violence was a Qaeda operation rather than a protest, White House officials continued to stress the importance of the "hateful" and "disgusting" video, and its supposed role as a catalyst for what Susan Rice, the ambassador to the United Nations, insisted was a spontaneous attack.

This narrative was pushed on Sunday morning programs, on late-night talk shows and at news conferences, by everyone from Rice to Hillary Clinton to the president himself. When Obama spoke at the United Nations shortly after the attacks, the video was referenced six times in the text; Al Qaeda was referenced only once.

Eventually, the White House let the video slip quietly out of its public rhetoric, and refocused

on terrorism instead. But everything else that's come out about Benghazi has seemed much more damning because the administration practiced a strange denial at the outset. The missed warnings, the weaknesses in security, the drip-drip of detail unspigoted by reporting and Congressional hearings — all of it would have been received differently if the White House hadn't spent a week acting as if it had something big to lose by calling terrorism terrorism.

What explains this self-defeating strategy? One possibility is that Romney's oft-repeated "apology tour" charge is right, and this White House can't resist the urge to appease our enemies when America comes under attack. But Romney's portrait of Obama as Neville Chamberlain has always been just a caricature, and nobody who watched the Democratic convention should doubt Obama's comfort wrapping himself in the mantle of the war on terror.

Another, more plausible possibility is that precisely because this White House wants to be seen as tough on terrorism, it's loath to acknowledge the possibility that it doesn't have Al Qaeda completely on the run.

But even this seems insufficient to explain the White House's Benghazi blundering. Surely acknowledging the persistence of Al Qaeda wouldn't undercut the administration's (justifiable) boasts about having taken out its leader. Indeed, if Bin Laden's organization is still with us, why wouldn't Americans want to keep the president who gave the Abbottabad order so he could finish the job?

Perhaps, then, the real explanation for the White House's anxiety about calling the embassy attack an act of terror has less to do with the "who" than with the "where." This wasn't Al Qaeda striking just anywhere: it was Al Qaeda striking in Libya, a country where the Obama White House launched a not-precisely-constitutional military intervention with a not-precisely-clear connection to the national interest.

In a long profile of President Obama published last month by Vanity Fair, Michael Lewis suggested that the president feared the consequences of even a single casualty during the Libyan incursion, lest it create a narrative about how "a president elected to extract us from a war in one Arab country got Americans killed in another."

How much more, then, might the president fear a narrative about how our Libyan intervention helped create a power vacuum in which terrorists groups can operate with impunity? That's

clearly happened in nearby Mali, where the ripple effects from Muammar el-Qaddafi's overthrow have helped empower a Qaeda affiliate. In this context, it's easy to see why the administration would hope that the Benghazi attack were just spontaneous mob violence rather than a sign of Al Qaeda's growing presence in postintervention Libya as well.

The only good news for Obama in this mess is the fact that Romney, always intent on projecting toughness, hasn't attacked the original decision to go to war in Libya, or tied the intervention itself to Al Qaeda's North African advances.

If the Republican nominee were less reflexively hawkish, the White House might be facing the more comprehensive critique that it deserves — and the story wouldn't be about just the specifics of Benghazi, but also the possibility that Obama's entire policy in the region has put American interests and lives at risk.

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EXHIBIT B

The Washington Post

CIA documents supported Susan Rice's description of Benghazi attacks

By David Ignatius, Published: October 19

The Romney campaign may have misfired with its suggestion that statements by President Obama and U.N. Ambassador Susan Rice about the Benghazi attack last month weren't supported by intelligence, according to documents provided by a senior U.S. intelligence official.

"Talking points" prepared by the CIA on Sept. 15, the same day that Rice taped three television appearances, support her description of the Sept. 11 attack on the U.S. Consulate as a reaction to Arab anger about an anti-Muslim video prepared in the United States. According to the CIA account, "The currently available information suggests that the demonstrations in Benghazi were spontaneously inspired by the protests at the U.S. Embassy in Cairo and evolved into a direct assault against the U.S. Consulate and subsequently its annex. There are indications that extremists participated in the violent demonstrations."

The CIA document went on: "This assessment may change as additional information is collected and analyzed and as currently available information continues to be evaluated." This may sound like self-protective boilerplate, but it reflects the analysts' genuine problem interpreting fragments of intercepted conversation, video surveillance and source reports.

The senior intelligence official said the analysts' judgment was based in part on monitoring of some of the Benghazi attackers, which showed they had been watching the Cairo protests live on television and

talking about them before they assaulted the consulate.

“We believe the timing of the attack was influenced by events in Cairo,” the senior official said, reaffirming the Cairo-Benghazi link. He said that judgment is repeated in a new report prepared this week for the House intelligence committee.

Here’s how the senior official described the jumble of events in Benghazi that day: “The attackers were disorganized; some seemed more interested in looting. Some who claimed to have participated joined the attack as it began or after it was under way. There is no evidence of rehearsals, they never got into the safe room ... never took any hostages, didn’t bring explosives to blow the safe room door, and didn’t use a car bomb to blow the gates.”

The Benghazi flap is the sort of situation that intelligence officers dread: when politicians are demanding hard “yes” or “no” answers but evidence is fragmentary and conflicting. The political debate has focused on whether the attack was spontaneous or planned, but the official said there’s evidence of both, and that different attackers may have had different motives. There’s no dispute, however, that it was “an act of terror,” as Obama described it the next day.

“It was a flash mob with weapons,” is how the senior official described the attackers. The mob included members of the Ansar al-Sharia militia, about four members of al-Qaeda in the Maghreb, and members of the Egypt-based Muhammad Jamal network, along with other unarmed looters.

The official said the only major change he would make now in the CIA’s Sept. 15 talking points would be to drop the word “spontaneous” and substitute “opportunistic.” He explained that there apparently was “some pre-coordination but minimal planning.”

The intelligence community obviously feels burned by having its tentative assessments become a political football in this campaign and, in truth, one obvious lesson is that the United States could use much better real-time intelligence from places such as Libya.

The Benghazi attack produced a swirl of intelligence reporting, some of it contradictory. The Associated Press reported Friday that within 24 hours of the assault, the CIA station chief in Libya cabled headquarters that eyewitnesses said the attack had been carried out by militants. But the analysts evidently didn’t feel that they had any single report that allowed them to make a definitive determination about the nature of the attack.

A memo prepared by the National Counterterrorism Center on Sept. 14 illustrates the fragmentary nature of the evidence: “As time progresses, we are learning more, but we still don’t have a complete picture of what happened,” noted the analysts. “At this point, we are not aware of any actionable intelligence that this attack was planned or imminent. ... We are very cautious about drawing any firm conclusions at this point with regard to identification and motivation of the attackers.”

The analysts seem confident that al-Qaeda’s new leader, Ayman al-Zawahiri, played no direct role in the Benghazi events, even though he called on Sept. 10 for revenge attacks against the United States. “He’s not a manager, he’s not a planner, he’s not an operator. He’s a theologian, and that doesn’t have much resonance now. He’s almost irrelevant, he’s so concerned about his security, so hunkered down,” said the senior official.

Ironically, the Sept. 15 talking points that were the basis for Rice’s televised comments were requested by the House intelligence committee. Ideally, the congressional oversight committees would provide

bipartisan support for intelligence officials who are probing the attack. But in the heat of the final pre-election weeks, the murky details of what happened in Libya have instead become political assault weapons.

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Benghazi flap is obscuring real issues

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EXHIBIT C

The New York Times

MIA
WASIKOWSKI

October 21, 2012

Benghazi and Arab Spring Rear Up in U.S. Campaign

By **DAVID D. KIRKPATRICK**

BENGHAZI, Libya — When people here talk about American politics, many look to the sky, where the buzz of surveillance drones has grown heavy since last month's deadly assault on the United States mission in this city in eastern Libya.

"Give it a rest, Obama," one resident posted in a Twitter message on Saturday morning, after a low-flying drone woke much of the city. "We want to get some sleep."

The drones are a vivid reminder that Benghazi has become the focal point of a fierce debate over what role the United States should seek to play in shaping the new order emerging from the revolts of the Arab Spring, an issue that is expected to be a flash point in Monday night's foreign policy debate between Mitt Romney and President Obama.

Yet Benghazi has entered the American political lexicon with contradictory meanings.

To Mr. Romney, the Republican presidential nominee, the city has become shorthand for the growing threat to the United States from Islamist militants — and what Romney advisers call the Obama administration's "passivity" in the face of the menace. To President Obama, Benghazi is also the place where moderate Islamists took up arms to defend American diplomats from extremists, a democratically elected president rushed to express his solidarity with Washington and thousands turned out to demand the rule of law and mourn an American envoy.

The candidates' differing views encapsulate their approaches to both the Arab Spring and the nature of American power. Mr. Obama has emphasized cautious restraint, out of philosophical support for Arab demands for self-governance and out of a conviction that events in the region

are largely beyond American control. Mr. Romney has stressed his wariness of the popular uprisings and vowed a more assertive approach to influencing their outcome.

That disagreement in many ways mirrors the paradoxical views of America held by many of the region's people and policy makers, who see Washington as all-powerful but also doomed to self-sabotage whenever it intervenes there.

Many here ask, nodding toward the sky, has America not learned the lessons of Iraq?

"People, psychologically, are quite anxious," said Jalal el-Gallal, a Benghazi political activist, who worries that the pressures of an election year could prompt an American strike on militants suspected in the consulate attack. "It would destroy all the good will that was won over the last two years of engagement, and it could undermine the elected government and make the place ungovernable."

More than a decade of public opinion polls have shown that, except for the hope that America might goad Israel toward recognizing a Palestinian state, overwhelming majorities of the populations in every Arab country would prefer a more restrained American foreign policy like Mr. Obama's. For many, Mr. Romney's assertion in an address that "there is a longing for American leadership in the Middle East" is not just false but a laugh line.

If Mr. Obama's soft touch is popular in the region, however, it may not be in America's best interest, argued Shadi Hamid, research director of the Brookings Doha Center in Qatar.

"There is a widespread sense in the region that Obama is a weak, somewhat feckless leader," Mr. Hamid said, citing Mr. Obama's acquiescence in confrontations with Israeli leaders over settlements and with Egypt's generals over the prosecution of American-backed nonprofit groups.

"People think that if you are in a standoff with Obama and you hold your ground, he will eventually back down," Mr. Hamid said.

The contrast between the candidates is so stark they sometimes appear to be on opposite sides of the Arab Spring itself. President Obama, his advisers say, began with the premise that the old American-backed order of secular autocracies was already crumbling from within and could no longer promise stability, while the Arab demands for self-governance accorded more with

American values.

“The president made a decision to side with democratic change,” said Benjamin Rhodes, a deputy national security adviser, “and we made it clear that it is not our place to dictate the outcomes in any given country.”

Mr. Romney has emphasized the risks of uprisings. Eliot A. Cohen, a foreign policy adviser to his campaign, said he questioned the concept of an Arab Spring altogether. “It is not clear to me what is germinating,” he said.

Where the president says he is supporting new democracies, Mr. Romney argues that the Obama administration has, in effect, abandoned the region to forces hostile to American interests. “If you don’t even try to shape events,” Mr. Cohen said, “then for sure you are going to get a bad outcome.”

Neither candidate has fully squared the potential conflicts of American values and interests, a problem most acute in the case of Bahrain. Its Sunni Muslim monarch used brutal force to crush a democracy movement among the Shiite majority, but the island kingdom is also home to the United States Navy’s Fifth Fleet and a crucial bulwark against Iranian influence.

Obama administration officials say they concluded that even the presence of the Fifth Fleet gave Washington little influence over Bahrain’s rulers. Saudi Arabia and the other Sunni monarchies in the Persian Gulf were determined to prop up the kingdom even if the United States withdrew.

In the most urgent question now posed by the Arab Spring, rebels in Syria are battling a longtime American foe, marching under the banner of Arab democracy and pleading for Washington to supply them with weapons.

But the Obama administration has nonetheless declined to provide the arms, saying it has too little sway over the direction of the insurgency, the influence of Islamist extremists, the potential that the weapons might be turned on neighbors like Israel or the likelihood of a sectarian blood bath. Iraq, White House advisers say, proved that the United States is ill equipped to manage a sectarian civil war.

Mr. Romney has vowed to arm the opposition despite the acknowledged risks, as a way of

buying an American say in whatever comes next.

“Sooner or later Assad is going to go down, so you are better off getting in there early to try to shape what you are going to get as a result,” Mr. Cohen said, referring to Bashar al-Assad, Syria’s ruler. “Or the choice is to be passive, as we have been, and watch the void filled by others who don’t like us,” like hard-line Islamists.

On Friday, the Syrian opposition declared a national demonstration to express its frustration at the American refusal to supply it with weapons. But the Syrian rebels also say they doubt that as president Mr. Romney would live up to his promise or that Congress would let him. “It is just propaganda for the elections,” said Abu Jaafar El Megharbel, an activist from Homs.

Some regional governments supportive of the rebels dismissed Mr. Romney’s proposal in even stronger terms. “That would explode the whole area, if Romney is serious about it,” warned Amr Darrag, the top foreign policy official of the political party of the Muslim Brotherhood in Egypt, the party of the country’s newly elected president. “The difference reflects the good experience of President Obama and a lack of experience of Governor Romney.”

On the subject of political Islam, the Obama administration concluded that democracy would inevitably empower Islamist parties, leaving the United States no choice but to build partnerships with them. Breaking decades of mutual hostility, the administration has opened cordial relations with the Islamists who dominated elections in both Tunisia and Egypt — in each case, with promises of tolerance, pluralism and constitutional democracy.

White House officials said they have no bias against Islamist parties. “We will judge these parties not by who they are but what they do,” Mr. Rhodes said. Officials said that responsibility for governing and participation in the political process can have a moderating influence on the movement. “We believe there is a chance for democratic change to undercut the Al Qaeda narrative,” Mr. Rhodes said.

The Romney camp, on the other hand, views Islamists — even the most moderate — as a potentially threatening force. Despite their public statements and recent track record, Mr. Cohen argued, it was premature to conclude that any of the Islamists were committed to democracy.

"I think we have to be very cautious that it is only a 'one man, one vote, one time' kind of process," he said. "We are going to have a very complicated relationship with these people."

To Mr. Romney, foreign aid should be used for political leverage, particularly in Egypt. Mr. Obama has resisted attaching any conditions to the \$1.5 billion in annual American aid to Egypt in order to preserve friendly relations and long-term influence. Mr. Romney has vowed to use the money as punishment or reward.

For example, Mr. Cohen said, Mr. Romney might penalize Egypt's Islamist government for its slow response when protesters breached the walls of the American Embassy in Cairo last month. "We are not going to give those kinds of sums to people who fail to deliver on their most basic obligations to us," he said.

But Mr. Darrag of the Muslim Brotherhood said the aid was not much of a cudgel against a country with an economy of \$200 billion a year. "It is just not acceptable for one party to say, 'We give you this amount of money so you have to listen to what we are saying,' " he said. "That is when we get very offended."

Such talk was the difference between a candidate and a president, Mr. Darrag said, arguing that governing responsibility would moderate Mr. Romney as well, just as it has previous presidents. "I would say Romney would sound the same as Obama four years after the start of his term," Mr. Darrag said, "That has always been the case."

Suliman Ali Zway contributed reporting from Benghazi, Libya, and Mayy El Sheikh from Cairo.

EXHIBIT D

State Department: We didn't link Libya attack to video

State Department: We didn't link Libya attack to video

Larry Margasak, Associated Press 9:11p.m. EDT October 9, 2012



(Photo: Ibrahim Alaguri, AP)

WASHINGTON (AP) — A senior State Department official says his department never concluded that the consulate attack in Libya stemmed from protests over an American-made video ridiculing Islam, raising further questions about why the Obama administration initially used that explanation after assailants killed four Americans there.

Briefing reporters Tuesday, officials provided a more detailed rundown of the Sept. 11 attack in Benghazi. They said the attack came without warning and involved multiple groups of men armed with weapons such as machine guns and rocket-propelled grenades.

But asked about the administration's initial explanation linking the violence to the video, one official said, "That was not our conclusion." The official called it a question for "others" to answer.



The officials spoke on condition of anonymity because they weren't authorized to speak publicly on the matter.

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EXHIBIT E

Rice once appeared to be inevitable secretary of state

By Allison Brennan, CNN

updated 6:13 PM EST, Thu December 13, 2012

CNN.com

Washington (CNN) -- At one time, Susan Rice seemed to be on a trajectory that would take her to the secretary of state's office in President Barack Obama's second term.

But that trajectory changed Thursday when the U.S. ambassador to the United Nations withdrew her name from consideration to succeed current Secretary of State Hillary Clinton.

In a letter to the president, Rice explained her decision to pull herself out of the running.

"I am highly honored to be considered by you for appointment as Secretary of State," the letter read. "However, if nominated, I am now convinced that the confirmation process would be lengthy, disruptive and costly -- to you and to our most pressing national and international priorities. That trade-off is simply not worth it to our country. ... Therefore, I respectfully request that you no longer consider my candidacy at this time."

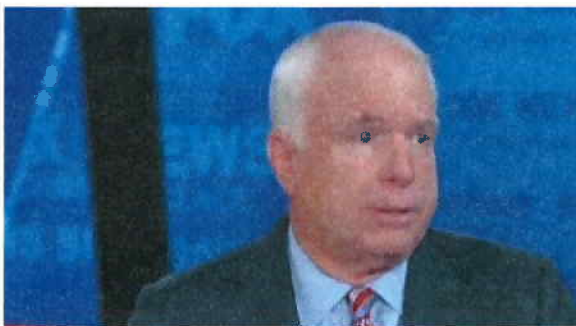
A former administration official with knowledge of Rice's decision said this was Rice's decision; the White House did not ask her to stand down.

Obama said that while he regretted Rice's decision to withdraw he would continue to rely on her advice.

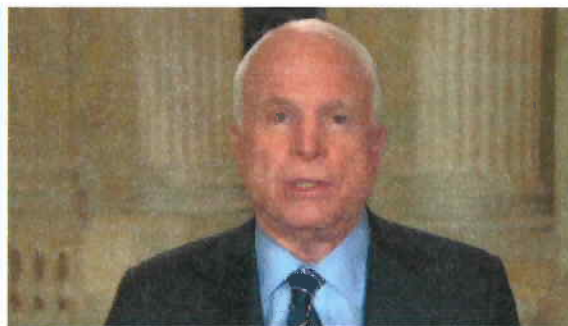
Rice's path began decades ago with the help of family friend Madeleine Albright, the woman who became the first female secretary of state.

Benghazi talking points omitted link to al Qaeda

Albright, while serving under President Bill Clinton, recommended that he tap Rice for a high-level State Department post on African affairs in the late 1990s.



McCain softens judgment of Susan Rice



McCain: Rice was 'deceptive' on Libya



Graham: I don't trust Susan Rice

Albright had previously served

with Rice's mother, Lois Rice, on a school board in Washington and watched Rice grow



Obama: 'Outrageous' to sully Rice's name

up with her own daughters.

"If I were to characterize her, whether it's playing basketball or anything else, she's fearless," Albright said about Rice in a Washington Post interview during her time as the top U.S. diplomat.

Rice, 48, was born in Washington to parents with distinguished careers. Her mother, who currently serves as a guest lecturer at the

Brookings Institution and is an expert on financing of higher education, served on the board of directors of 11 major U.S. corporations.

Her father, Emmett Rice, died in 2011. He was a professor of economics at Cornell University, was a member of the Federal Reserve Board of Governors and flew with the Tuskegee Airmen in World War II.

Susan Rice **told** the Washington Post after her father's death that he instilled in her "a strong sense of personal and social responsibility" that guided her career decisions.

"He believed mightily in the power of the individual to determine his or her own destiny," she said.

And by all accounts, Rice determined her own destiny and amassed a slew of notable accomplishments.

Stanford, Oxford, White House job

One of Rice's former teachers at the National Cathedral School noted her accomplishments in a letter to the editor after the Washington Post's Dana Milbank published a **November 18 column** questioning her readiness to become secretary of state.

Rice, who was valedictorian of her class and a star point guard on the basketball team, exhibited "superior leadership skills" and "left behind a remarkable legacy" that included a revised honor code still used at the school, John Wood wrote.

Intelligence on Benghazi shifted after Obama administration described attack as 'spontaneous'

Rice earned Phi Beta Kappa honors at Stanford University, where she earned her bachelors degree in history and won a Rhodes Scholarship to study international relations at Oxford University in 1986.

Rice's work at Oxford, where she earned her masters and later a doctorate in international relations, earned the Chatham House-British International Studies Association Prize for the top doctoral dissertation in the United Kingdom in international relations.

After graduation, Rice headed to McKinsey & Company in Toronto, where she worked as an international management consultant. In 1992, she married Ian Cameron, a producer for the Canadian Broadcasting Corporation, whom she had met at Stanford.

In 1993, Rice returned to Washington to take a position with the National Security Council as director of international organizations and peacekeeping. A year later, she toured war-torn Rwanda after the genocide campaign there killed more than 800,000 people in 100 days.

She told journalist Samantha Power that if she ever faced such a crisis again she would come down on the side of taking action, unlike the course the Clinton administration and the rest of the world took at the time.

Rice was promoted in 1995 to become special assistant to the president and senior director of African affairs at the White House National Security Council.

Clinton stands by Rice after calls to step down

She became a senior fellow in 2002 at Brookings, where she specialized in the study of U.S. foreign relations, and was national security and foreign relations adviser for Obama's 2008 campaign.

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In nominating her to the ambassador's post, Obama called Rice "a close and trusted adviser" and said she "shares

my belief that the U.N. is an indispensable -- and imperfect -- forum."

At the same time, she has drawn some attention for the way she operates.

Insiders say Rice is ambitious and aggressive. Colum Lynch of the Washington Post and Foreign Policy told CNN that one of her nicknames at the U.N. Security Council is "The Bulldozer."

"I think that everyone has complicated feelings about her," Lynch said.

He characterized her as "very personable, likeable, charming, smart, funny, down to earth" but also someone with sharp elbows.

"You don't want to get in the way of her, and whether that's a point to her advantage or a point against her, well, I guess it depends on who you are asking," Lynch said.

Benghazi controversy

In the days following the September 11 attacks on the Benghazi consulate that killed Ambassador Christopher Stevens and three other Americans, Rice became the administration's point person on the matter. In multiple TV appearances after that attack, Rice cited a hateful video that fueled a spontaneous mob attack as the reason for the deaths.

Senior U.S. officials have said that Rice's comments were based on an intelligence assessment that was later updated to reflect a preliminary view that demonstrators were not the culprits.

Lawmakers say meeting with Rice left them with more questions

The most strident Republicans suggested the characterization of the attack as a mob gone awry might have been the basis for a cover-up during a ferocious political campaign.

Criticism intensified as the explanation of events slowly shifted, with the administration eventually raising the possibility that the attack was planned by al Qaeda.

Some leading Senate Republicans said they could not support Rice if Obama nominated her to replace Hillary Clinton as secretary of state. While Obama has not indicated whom he might appoint, White House sources have said that Rice was a top candidate.

Rice did little to quell criticism of her when she visited the Hill to meet with her toughest critics over Benghazi -- Republican Sens. John McCain of Arizona, Lindsey Graham of South Carolina and Kelly Ayotte of New Hampshire.

The session, called by Rice to answer questions about her comments, ended up with the lawmakers saying they were "significantly troubled" by many of her answers.

Graham said Rice's comments amounted to a "statement disconnected from reality" and that his concerns about Rice were "greater today than they were before."

McCain said the "information that she gave the American people was incorrect."

In a statement following the meeting, which also included Acting CIA Director Michael Morrell, Rice said the two stressed that "neither I nor anyone else in the administration intended to mislead the American people at any stage in this process, and the administration updated Congress and the American people as our assessments evolved."

After Rice had withdrawn, an administration official voiced frustration that Rice had been unfairly targeted over Benghazi.

"It's absolutely a fact that she had nothing to do with the security presence in Benghazi and the intelligence collection or assessment. All she did was some interviews using cleared talking points that reflected our best understanding of the situation as we knew it at that time, the official said. "The fact that four people died in Libya is a tragedy, but Susan Rice had nothing to do with that tragedy. The fact that they focused on her talking points is a disservice to everyone who cares about this issue."

Following Rice's decision, Graham released a statement saying, "I respect Ambassador Rice's decision.," Graham said." President Obama has many talented people to choose from to serve as our next Secretary of State."

Graham added that he would continue to try to get the bottom of Benghazi.

Obama, had fiercely defended Rice since Republicans first began to question her nomination -- first in the second presidential debate and later in his first news conference after his re-election.

He continued his support in a statement responding to Rice's decision.

"I have every confidence that Susan has limitless capability to serve our country now and in the years to come, and know that I will continue to rely on her as an advisor and friend," the president said. "While I deeply regret the unfair and misleading attacks on Susan Rice in recent weeks, her decision demonstrates the strength of her character, and an admirable commitment to rise above the politics of the moment to put our national interests first."

CNN's Jim Acosta, Elise Labott, Richard Roth Jessica Yellin contributed to this report

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EXHIBIT F

Hillary Clinton Endures Brusque Questioning at Hearings

By SARAH PARNASS

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abcnews.go.com



ABC News

Clinton Says Iran, Afghanistan Diverted Embassy Resources

House Republicans slammed Secretary of State Hillary Clinton today for her lack of awareness of State Department cables warning of security threats in Benghazi, Libya, prior to the Sept. 11 attack that killed four Americans, including Amb. Chris Stevens.

In the second congressional hearing of the day reviewing a report by the Accountability Review Board on the State Department's security failures, Rep. Michael McCaul, R-Texas, asked Clinton this afternoon why her office had not responded to a notification from Stevens about potential dangers in Libya.

"Congressman, that cable did not come to my attention," Clinton calmly told the House Foreign Affairs Committee hours after her Senate testimony this morning. "I'm not aware of anyone within my office, within the secretary's office having seen that cable."

She added that "1.43 million cables come to my office. They're all addressed to me."

Hillary Clinton's Fiery Moment at Benghazi Hearing

Rep. Matt Salmon, R-Ariz., asked Clinton whether she thought that signaled the need for a shifting of priorities to make sure she is notified about these kinds of threats in the future.

"That's exactly what I'm intent on doing," Clinton said. "We have work to do. We have work to do inside the department. We have work to do with our partners in DOD and the intelligence community."

Such answers failed to appease members like Rep. Jeff Duncan, R-S.C., who accused Clinton of letting "the consulate become a death trap."

Clinton also told the House committee that an emphasis on security in Iraq and Afghanistan in the past decade diverted resources from other outposts around the world.

She told Rep. Chris Smith, R-N.J., that legislation he championed reorganizing the State Department in the 1990s had "been very important in protecting our people around the world," but that the need for funding was ongoing and unmet.

Clinton reprised her role as defender of the State Department this afternoon in the second half of congressional testimony on the security failures that led to the deaths of Stevens and the other Americans.

Stevens understood the significance of the mission, she told the committee several hours after a morning Senate appearance.

"That's why Chris Stevens went to Benghazi in the first place," she said. "Nobody knew the dangers better than Chris, first during the revolution and then during the transition. A weak Libyan government, marauding militias, even terrorist groups ... a bomb exploded in the parking lot of his hotel. He never wavered. He never asked to come home. He never said let's shut it down, quit, go somewhere else."

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Representatives repeatedly asked about U.N. Ambassador Susan Rice's assertion on Sunday morning talk shows in September that the attack was fueled by outrage over a video attacking Islam.

Clinton's response was to refer to the ARB report, which said the motivations behind the attack were complicated and still not all known. She maintained that Rice was speaking based upon talking points given to her by the intelligence community.

Rep. Joe Wilson, R-S.C., asked why the secretary of state herself did not appear in Rice's place to give those televised explanations to the country.

"Well, I have to confess here in public [that] going on the Sunday shows is not my favorite thing to do. There are other things that I prefer to do on Sunday mornings," Clinton replied. "And I did feel strongly that we had a lot that we had to manage, that I had to respond to. And I thought that should be my priority."

The afternoon appearance followed morning testimony from an energized Clinton, who stood her ground and told the Senate Foreign Relations Committee that she has overseen plans to secure diplomatic outposts around the world while cuts in State Department funding undermine those efforts.

Citing a report by the department's Accountability Review Board on the security failures that led to the deaths of four Americans in Benghazi, Libya, during an attack last year, Clinton said the board is pushing for an increase in funding to facilities of more than \$2 billion per year.

"Consistent shortfalls have required the department to prioritize available funding out of security accounts," Clinton told the Senate this morning, while again taking responsibility for the Benghazi attack. "And I will be the first to say that the prioritization process was at times imperfect, but as the ARB said, the funds provided were inadequate. So we need to work together to overcome that."

Clinton, showing little effect from her recent illnesses, choked up earlier in discussing the Benghazi attack.

"I stood next to President Obama as the Marines carried those flag-draped caskets off the plane at Andrews," Clinton said this morning, her voice growing hoarse with emotion. "I put my arms around the mothers and fathers, sisters and brothers, sons and daughters."

The outgoing secretary of state was the only witness to giving long-awaited testimony before the Foreign Relations Committee this morning, and appeared before the House Foreign Affairs Committee at 2 p.m.

The secretary, who postponed her testimony in December, started today by giving context to the terrorist attack. "Any clear-eyed examination of this matter must begin with this sobering fact," Clinton began. "Since 1988, there have been 19 Accountability Review Boards investigating attacks on American diplomats and their facilities."

But the secretary did not deny her role in the failures, saying that as secretary of state, she has "no higher priority and no greater responsibility" than protecting American diplomats abroad like those killed in Benghazi.

"As I have said many times, I take responsibility, and nobody is more committed to getting this right," Clinton said. "I am determined to leave the State Department and our country safer, stronger and more secure."

Among the steps Clinton has taken, she said, is to "elevate the discussion and the decision-making to make sure there's not any" suggestions that get missed, as there were in this case.

Clinton testified that the United States needs to be able to "chew gum and walk at the same time," working to shore up its fiscal situation while also strengthening security, and she refuted the idea that across-the-board cuts

slated to take place in March, commonly referred to as sequestration, were the way to do that.

"Now sequestration will be very damaging to the State Department and USAID if it does come to pass, because it throws the baby out with the bath," Clinton said, referring to the United States Agency for International Development, which administers civilian foreign aid.

While the State Department does need to make cuts in certain areas, "there are also a lot of very essential programs ... that we can't afford to cut more of," she added.

More than four months have passed since the attack killed U.S. Ambassador Christopher Stevens and three other Americans in Libya. These meetings, during which Clinton discussed the report on State Department security failures by the Accountability Review Board, were postponed because of [her recent illness](#).

Clinton told the Senate that the State Department is on track to have 85 percent of action items based on the recommendations in the ARB report accomplished by March, with some already implemented.

The report led the State Department to relieve [three employees](#) of their posts -- while a fourth resigned -- because of "systemic failures and leadership deficiencies at senior levels in securing the compound."

The departing staffers are still on administrative leave, however, meaning they are still State department employees.

While most senators took time out of the two-and-half-hour-long hearing to praise Clinton's tenure at the State Department, others came down hard on her.

Sen. Rand Paul, R-Texas, did not shy away from placing full responsibility on Clinton's shoulders.

"I think that ultimately with your leaving you accepted culpability for the worst tragedy since 9/11," Paul told the secretary. "Had I been president at the time and I found that you did not read the cables from Benghazi, you did not read the cables from Ambassador Stevens, I would have relieved you of your post. I think it's inexcusable."

Clinton said that was the reason her department turned to the Accountability Review Board.

"The reason we put into effect an accountability review board is to take it out of the heat of politics and partisanship and accusation, and to put it in the hands of people who have no stake in the outcome," Clinton told the committee.

The secretary herself remained energized throughout the hearing. Indeed, Sen. John McCain, R-Ariz. called her "as combative as ever" before launching into his own attack on Clinton, who had testified that the motivation for the attack in Benghazi shouldn't matter at this point.

"Why do we care?" McCain asked. "Because if the classified information had been included, it gives an entirely different version of events to the American people.

"So here we are, four months later, and we still don't have the basic information."

Clinton ripped into Sen. Ron Johnson, R-Wis., for asking a similar question.

"With all due respect, we had four dead Americans. Was it because of a protest or was it because of guys out for a walk who decided they'd go kill Americans," [she said](#), gesturing sharply with her hands to emphasize each sentence. "What difference at this point does it make? It is our job to figure out what happened."

Clinton testified briefly before the Senate less than two weeks after the attack, an appearance that received considerable criticism from conservatives.

McCain said Clinton told the Senate "nothing" at that hearing.

"We were told absolutely nothing, all because it's an investigation going on," McCain said on the Senate floor Sept. 21, 2012.

Sen. Robert Menendez, D-N.J., is presiding over the hearing on the Senate side, in place of out-going committee chair Sen. John Kerry, D-Mass., whom President Obama has nominated to take over Clinton's position as secretary of State.

Ed Royce, R-Calif., chairman of the House Foreign Affairs Committee, is presiding over the afternoon hearing.

This won't be Clinton's last trip to Capitol Hill. At the end of the Senate hearing, Menendez said that Clinton would be one of the people introducing Sen. Kerry at his confirmation hearing before the Foreign Relations Committee Thursday.

ABC News' Dana Hughes contributed to this report.

EXHIBIT G

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Clinton forcefully defends handling of Benghazi attack

Wed, Jan 23 2013

By [Arshad Mohammed](#) and [Tabassum Zakaria](#)

WASHINGTON (Reuters) - Secretary of State Hillary Clinton on Wednesday forcefully defended her handling of the September 11 attack on the U.S. mission in the Libyan city of Benghazi and denied any effort to mislead the American people.

The attack by armed militants that killed U.S. Ambassador Christopher Stevens and three other Americans threatens to stain Clinton's legacy as secretary of state and could cast a longer shadow should she decide to make a White House run in 2016.

By turns emotional and fierce, Clinton choked up at one point in six hours of congressional testimony as she spoke of comforting the Benghazi victims' families and grew angry when a Republican accused the Obama administration of misleading the country over whether the attack stemmed from a protest.

"With all due respect, the fact is that we had four dead Americans," Clinton said angrily as she testified before the Senate Foreign Relations Committee, an appearance delayed more than a month because of her ill health.

"Was it because of a protest, or was it because of guys out for a walk one night who decided they'd go kill some Americans? What difference, at this point, does it make?" she said, making chopping motions with her hands for emphasis.

"It is our job to figure out what happened and do everything we can to prevent it from ever happening again."

During the morning Senate hearing and a later session in the U.S. House of Representatives, Republicans and Democrats pointed fingers at each other, with Republicans accusing Clinton's State Department of mismanagement and Democrats defending her.

But little new information about the Benghazi incident and the administration's response to it emerged from the lengthy hearings. Clinton did say that there were at least 20 other U.S. diplomatic posts under serious security threat, but declined to name them at the public session.

Clinton cast the Benghazi incident as part of a long history of such violence as well as the result of instability since the Arab Spring of popular revolutions began in 2011, toppling authoritarian rulers in Tunisia, Egypt, Libya and Yemen.

"Benghazi did not happen in a vacuum," Clinton said. "The Arab revolutions have scrambled power dynamics and shattered security forces across the region."

'I TAKE RESPONSIBILITY'

On the same day as the Benghazi assault, a mob angered by a U.S.-made video depicting the Prophet Mohammed as a fool and philanderer attacked the U.S. embassy in Cairo. There were later attacks on U.S. embassies in Tunisia, Yemen and Sudan.

Republicans harshly criticized Clinton, and President Barack Obama's administration more generally, with Senator Bob Corker saying the Benghazi attack and the U.S. response displayed "woeful unpreparedness" for the events sweeping the region. Senator Rand Paul said Clinton should have been fired.

Clinton, echoing comments she first made on October 15, said: "I take responsibility." She stressed that she had accepted all the recommendations of an independent panel that investigated the incident and that held lower-level officials responsible.

"Nobody is more committed to getting this right. I am determined to leave the State Department and our country safer, stronger and more secure," Clinton said.

Militants attacked and overwhelmed the U.S. diplomatic facility in Benghazi, Libya, on September 11 in a sustained assault.

The official U.S. inquiry released on December 18 concluded that "leadership and management failures" in two State Department bureaus led to a security posture "inadequate for Benghazi and grossly inadequate to deal with the attack that took place."

The unclassified version of the "Accountability Review Board" report also faulted poor coordination and unclear lines of authority in Washington. Four lower-level officials were placed on administrative leave following the release of the inquiry, which did not find Clinton personally at fault.

Clinton is expected to step down in the coming days once her designated successor, Senator John Kerry, is confirmed by the U.S. Senate.

Originally due to testify on December 20, Clinton had to postpone after she suffered a concussion when she fainted due to dehydration. Doctors later found she had a blood clot in her head and hospitalized her for several days.

Several senators, noting the vehemence of Clinton's defense, said she appeared to have fully recovered.

While many senators warmly praised her four-year tenure as secretary of state, and several hinted at the possibility of her running for president in 2016, some Republicans were scathing.



They pressed Clinton about what they described as an August 16, 2012 cable from Stevens saying that the Benghazi mission could not withstand a coordinated attack.

"That cable did not come to my attention," Clinton replied, saying that the State Department receives 1.43 million cables a year.

"Had I been president at the time and I found that you did not read the cables ... from Ambassador Stevens, I would have relieved you of your post. I think it's inexcusable," Paul, a Kentucky Republican, told Clinton.

'AS COMBATIVE AS EVER'

Senator John McCain, an Arizona Republican, told Clinton it was "wonderful to see you in good health and as combative as ever," before going on to say that he categorically rejected one of her answers and found others unsatisfactory.

While clouding Clinton's tenure at the State Department, the controversy over the Benghazi attack also cost Susan Rice, the U.S. ambassador to the United Nations, her chance to succeed Clinton as secretary of state.

Republicans in Congress blasted Rice for her comments five days after the attack in which she said it appeared to be the result of a spontaneous protest rather than a planned assault.

Rice, who has said her comments were based on talking points from the U.S. intelligence community, eventually withdrew her name from consideration for the top U.S. diplomatic job.

"We were misled that there were supposedly protests and then something sprang out of that, an assault sprang out of that," Senator Ron Johnson, a Wisconsin Republican, told Clinton, referring to Rice's appearance on Sunday television talk shows.

Clinton rejected the charge.

"People have accused Ambassador Rice and the administration of, you know, misleading Americans," she said. "Nothing could be further from the truth."

Earlier in her testimony, Clinton appeared to try subtly to distance herself from Rice's comments.

"The very next morning, I told the American people that heavily armed militants assaulted our compound, and I vowed to bring them to justice. And I stood with President Obama in the (White House) Rose Garden as he spoke of an act of terror," she said.

Clinton's voice cracked as she spoke of comforting families who lost relatives in the incident, the first since 1988 in which a U.S. ambassador was killed.

"For me, this is not just a matter of policy - it's personal," Clinton told the Senate panel.

"I stood next to President Obama as the Marines carried those flag-draped caskets off the plane at Andrews," she added, her voice breaking as she described the ceremony at Andrews Air Force Base in Maryland when the men's remains were brought home.

"I put my arms around the mothers and fathers, the sisters and brothers, the sons and daughters and the wives left alone to raise their children," she said.

(Additional reporting by Andrew Quinn and Patricia Zengerle; Editing by Will Dunham and David Brunnstrom)

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DATED: February 15, 2013

/s/ Timothy L. Alger

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